

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

LEWIS COUNTY MENTAL HEALTH
ASSOCIATION, d/b/a CASCADE MENTAL
HEALTH CARE.¹

Employer

And

Case 19-RC-14403

SERVICE EMPLOYEES INTERNATIONAL
UNION, DISTRICT 1199NW, AFL-CIO, CLC

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned makes the following findings and conclusions.³

SUMMARY

On June 13, 2003, the Petitioner filed the instant petition seeking a Sonotone⁴ election for representation for all professional and non-professional employees employed by the Employer, excluding office clerical employees.⁵ The parties stipulate to

¹ The name of the Employer appears as amended in the hearing.

² Both parties filed timely briefs, which were duly considered.

³ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

⁴ 90 NLRB 1236 (1950).

⁵ The unit(s) requested consist(s) of professional employees voting group A: all full and regular part time registered nurses, county designated mental health professionals, clinicians 2 and 3, including adult case managers and therapists, geriatric mental health specialists, child and adolescent case managers and therapists, co-occurring disorders counselors, MICA program counselors, hospital liaisons, homeless outreach case managers, employment specialists, and jail mental health case managers located at the Employer's facilities located at 135 West Main Street, Chehalis, Washington; and 2428 Reynolds Avenue, Centralia, Washington. Non-professional employees voting group B: clinical 1s and case aides employed by the Employer at its facilities located at 135 West Main Street, 187 West Main Street, Alfred Street, 40 Southwest Cascade Avenue, Chehalis, Washington; and a facility at 2428 Reynolds Avenue in Centralia,

the appropriateness of voting groups A, the professionals, and B, the nonprofessionals.⁶ However, the Employer seeks to include, and the Union to exclude, the clerical positions of administrative aide, receptionist, secretary, medical records clericals, accounting clericals and bookkeeping clericals. The Employer contends the clerical employees share a sufficient community of interest with employees in voting group B to require their inclusion in that voting group.

Based on the record as a whole, I conclude the clerical employees at issue do not share a sufficient community of interest with the employees in voting group B to require their inclusion in that voting group. Accordingly, I shall direct a Sonotone election be held in the two stipulated voting groups excluding the clerical employees.

Below, I have set forth a section dealing with the facts, as revealed by the record in this matter, and relating to background information about the Employer's operations and the terms and conditions of employment for the professional, nonprofessional and clerical employees. Following the Fact section is my analysis of the applicable legal standards in this case and a section setting forth the direction of election.

A.) FACTS

1.) Background

The Employer is a State of Washington nonprofit corporation engaged in providing mental health services to Lewis County, Washington, residents, with facilities located in Chehalis and Centralia, Washington. The Employer has at least four facilities located in Chehalis, Washington, and a facility located on Reynolds Avenue in Centralia, Washington, for the purpose of providing mental health services to the public.

The 135 West Main Street, Chehalis, location provides a variety of mental health services to the adult community through a variety of programs. It also offers "co-occurring disorders" treatment programs for the mentally ill and those with substance abuse problems, including providing employment services for clients of its co-occurring disorders treatment program. Twenty-five professional employees, one or two clinician 1s⁷ and two petitioned-for case aides work out of this facility. The 135 West Main Street facility also houses two administrative aides, two receptionists, a secretary, two medical records clericals and two accounting and bookkeeping clericals.

The Employer also operates another facility at 187 West Main Street called the Greenhouse. This facility operates much like a halfway house for clients who are transitioning out of the State Hospital or from homeless situations. Two clinical 1 employees normally work at the Greenhouse, although one position is vacant.⁸

Washington, excluding office clerical employees, guards, and supervisors as defined in the Act, and all other employees.

⁶ The Employer asserted that voting group B was inappropriate because it did not include the clericals. However, the thrust of its contention lies with its argument that the clericals inclusion is allegedly required, not that the voting group would otherwise constitute an inappropriate nonprofessional unit.

⁷ Dorothy Knight is identified as a clinician 1 in charge of providing screenings for individuals entering nursing homes to determine if there are any mental health issues. Knight's place of work was not identified.

⁸ No professional employee works out of this facility.

The Employer further operates a facility located on Alfred Street called the clubhouse, which is a walk-in facility where clients can come for various coordinated activities. A single clinician coordinates these activities. The record is unclear as to the specifics of these activities.⁹

The Employer additionally runs a crisis respite diversion house at its 40 Southwest Cascade facility where 4 clinician 1s work. The respite house's primary function is to provide a safe and secure environment for individuals who, for whatever reason, cannot stay in their primary residence for any period of time.¹⁰

In addition to the four Chehalis facilities, the Employer operates a child and adolescent program at its 2428 Reynolds Avenue, Centralia, Washington facility. Nine petitioned-for professional employees and nine clerical employees work out of this facility. One case aide also works at this facility two days a week.

The professional staff that are located at two of the above facilities¹¹ provide case management type services to clients.¹² Some of the stipulated professionals are licensed and required by State regulations to complete at least 36 hours of continuing education every three years, including courses in ethics and psychopharmacology to retain their license.

Six of the eight Clinician 1s provide support and assistance for the residents of the Greenhouse and Respite house facilities, including assisting clients in completing forms, taking clients to appointments, shopping, and a broad variety of other similar duties. As mentioned above, one clinician 1 is the Employer's geriatrics specialist and the eighth clinician 1 is a case manager. The employer prefers applicants for the clinician 1 position, as well as the case aide position to have experience in providing mental health services.

Clinical or case aides¹³ provide case management type services to clients at the direction of case managers. The record is unclear as to what this direction entails or what duties case aides perform beyond this description.

All petitioned-for employees perform clinical work both on site and off¹⁴ and are issued cell phones or provided with reimbursement for business use of their personal cell phones when they work off site. They are also required to work outside normal hours if there is a client need. The Employer maintains an "on-call" list when unscheduled assistance may be needed. Professionals are placed on the on-call list. Clinician 1s and case aides may volunteer for inclusion on the on-call duty list. All petitioned-for employees are expected to work flexible shifts and shifts outside a regular 8:00 a.m. to 5:00 p.m. shift. Since all petitioned-for employees work directly with clients,

⁹ No professional employee works out of this facility.

¹⁰ No professional employee works out of this facility.

¹¹ The Employer employs 3 Registered Nurses, 3 CDMHPs, 11 clinician 3s, and 17 clinician 2s.

¹² Although the witness identified all case managers as clinician 2s and 3s, she also identified a clinician 1 in the co-occurring disorders program as also a case manager.

¹³ The record also refers to the case aide classification as "clinical aide." The Employer's Exhibit 2 indicates it employs 2 "clinical" aides (Bev Reed and Robbin Wells) and identifies Michael Duffy as a clinician 1. Testimony identifies Duffy as a case aide.

¹⁴ The resource management and outpatient services grouping perform 90 percent of their work on-site. Community Services perform 70-80 percent of their work in the field. The rest split their time roughly equally between on-site and fieldwork.

they are also required to register as counselors with the Washington State Counselor Registration.

Clinician 1s earn \$22,730 to \$29,415 a year. Clinical aides earn \$20,455 to \$26,105. All employees, including the clericals, have the same policy manual, receive the same benefits and are subject to the same disciplinary and grievance procedure.

H. Sue Killillay is the Employer's executive director and sole witness at the hearing.¹⁵

2.) Unit Placement of the Clericals

At issue are the Employer's 14 clerical employees located at its 135 West Main Street and Reynolds Avenue facilities. The clericals in dispute occupy the following classifications: accounting manager, accounting clerk, 5 administrative aides, accounts receivable clerk, 3 medical records custodians, 2 receptionists, secretary, MIS aide and MIS assistant.

a. Accounting clericals

The accounting manager¹⁶ and clerk are located in the back of the Reynolds Avenue facility next to the management information system (MIS) clericals' office. The back offices are not accessible by the clients. The accounting manager is responsible for incoming expense reports, billing, processing accounts receivable, and general bookkeeping practices. She delegates some of these tasks to the accounting clerk, but the witness was not sure what functions have been delegated. The accounting clerk, besides performing whatever work has been delegated, also performs record keeping for the Employer's human resource function.

Both accounting clericals, along with relevant case managers, are also responsible for maintaining the checkbooks for clients the Employer terms "protected payees," or those clients who cannot manage their own funds. In that regard, they can sign checks for the protected payee client, but in that case they must notify the relevant case manager either directly, by phone or by email of the issuance. Mostly, their function in this regard is related to balancing the payee's checkbook. The accounts manager spends less than 5 percent of her time performing this function and the accounting clerk spends less than 1 percent of her time performing this function.

The Employer requires applicants for these positions to have electronic billing system experience and prefers applicants with accounting experience or an accounting degree. The salary for the accounting positions range from \$21,625 for accounting clerk to \$36,430 for accounting manager.

b. Accounts Receivable Clerk

¹⁵ The parties stipulated that H. Sue Killillay, Bud Hatfield, Gerene McDowell, Dr. Crabbe, Dr. Sattar, Darlene Dafoe, Traci Crowder, Leo Marty, Ian Harrel, Beth Rogers, and Stacy Esposito are §2(11) supervisors. The parties stipulated that Suzett Wilkes is a confidential employee and that Lora Webster is a volunteer and they should be excluded from any unit. Based on the record, I accept the parties' stipulations and hereby exclude them from the unit.

¹⁶ There is no contention that the accounting manager is a statutory supervisor or managerial employee, nor is there any evidence in the record of such.

The accounts receivable clerk contacts clients' insurance companies for authorizations for the various types of services offered. She records that information and passes it on to the resource managers (clinician 2s and 3s) for inclusion in determination of treatment or services provided. She also maintains all the records for individuals who pay their co-pay portions or pay the entire amount themselves. She sends billings to those individuals related to services received. The accounts receivable clerk is located with the MIS clericals in an office at the rear of the Reynolds Avenue facility.

c. Front desk clerks

In a glassed in area in the front of both the 135 West Main Street and Reynolds Avenue facilities, the Employer assigns administrative aides, receptionists and the secretary to greet visitors and clients as they enter the buildings and to take initial requests for services, take client changes of address, record changes in a client's benefits, etc.¹⁷ The administrative aides also route questions and calls to the relevant party. Part of their duties involve evaluating the incoming individuals, to determine whether they are in need of "crisis services." Thus, the employee evaluates the nature of the circumstances that brings the person to the Employer and whether the person demonstrates any suicidal ideation by asking questions of the individual from a prepared list of questions, and by observing the person. In the absence of supervision on the matter, the employee determines whether to place this individual ahead of others waiting to see a clinician or whether to call a case manager or other clinical employee immediately. According to the Employer's witness, all employees, including the front desk employees, are trained in this crisis evaluation process as well as in the new Health Insurance Portability and Accountability Act requirements protecting the privacy of clients.

The secretary performs traditional typing functions. She sits at the front desk, and in addition to her typing duties, shares front desk duties with the receptionists and administrative aides. The salary for the desk positions range from \$21,625 to \$29,125 (the same as the accounting clerk).

d. Management Information System clericals

MIS clericals are in the back offices with the other accounting and bookkeeping clericals at both the West Main Street and Reynolds Avenue facilities. They enter code data from a service sheet prepared by a case manager indicating the services provided to a client. MIS clericals electronically transfer that information to the State. The salary for this position ranges from \$25,710 to \$32,135.

e. Medical Records Clericals

There are three medical records clericals located at the 135 West Main Street and Reynolds Avenue facilities. As indicated above, one of these clericals also works part time at the front desk. The medical records clericals pull client charts and leave them in an anteroom or workstation for clinicians to review. When clinicians finish with a

¹⁷ Also assigned on a part-time basis is one of the medical records clerks.

client, they lay out the paperwork in the anteroom where the medical records clericals retrieve it and file it in the client's chart.¹⁸

All the clericals are cross-trained in the clerical functions at both the West Main Street and Reynolds Avenue facilities. However, the need for such transfers is infrequent. Further, some clinician 1s and case aides have occasionally been sent to help out at medical records in addition to helping other clinicians when they have free time. The record is silent as to the frequency in which this occurs. The salary range for this position is the same as the front desk clericals and the accounting clerk.

A nonclinician separately supervises all the clericals. A clinician supervises the clinicians and professionals.

B.) ANALYSIS

The issue presented is whether the Employer's clerical employees' inclusion in the nonprofessional voting group, group B, is required. The Employer takes the position that their inclusion is required and Petitioner's position is that their inclusion is not required.

In *Park Manor Care Center*,¹⁹ the Board ruled that the proper test for determining the appropriateness of bargaining units in nonacute care health care institutions is the "empirical community of interest test." Under that test, the Board considers community-of-interest factors, as well as those factors considered relevant by the Board in its rulemaking proceedings on *Collective-Bargaining Units in the Health Care Industry*.²⁰ The Board further considers the evidence presented during rulemaking with respect to units in acute care hospitals, and prior cases involving either the type of unit sought or the type of health care facility in dispute. Here, the parties stipulated to the appropriateness of voting groups A, the professional group, and B, the nonprofessional group. However, they disagree as to whether the inclusion of the Employer's clerical employees is required in voting group B.

In the rulemaking process, the Board recognized the distinction between business office clericals, who are typically excluded from other units, and other clericals, who are consistently included in other units where they have contact with employees in those units. The Board noted that business office clericals perform distinct functions, such as handling finances and billing, and dealing with Medicare, Medicaid, and other reimbursement systems. They are generally supervised separately in business office clerical departments and have little interaction with other nonprofessionals. See, e.g., *Lincoln Park Nursing Home*, 318 NLRB 1160, 1164 (1995).

For the reasons discussed below, the record here reflects that the clericals do not share such a community of interest with voting group B that their inclusion is required.

¹⁸ Although the witness indicated that the medical records clericals make notations on the chart, no specificity was presented as to what these notations or their frequency are.

¹⁹ 305 NLRB 872 (1991).

²⁰ Second Notice of Proposed Rulemaking, 53 Fed.Reg. 339900 (1988), reprinted at 284 NLRB 1528, and Final Rule, 54 Fed.Reg. 16336 (1989), reprinted at 284 NLRB 1580 and codified at Sec. 103.30 of the Board's Rules.

As for supervision, the clerical employees report to a different supervisor than do the clinicians and case aides. Indeed, the clerical supervisor is not a clinician, while the clinicians, both professional and non-professional, report to supervisors who are themselves clinicians.

The clericals also share integration among themselves more than with the other employees. In that regard, the clericals cross-train with each other at the two separate West Main Street and Reynolds Avenue locations. As for the petitioned-for nonprofessionals who work with the medical records clericals and receptionists, they help out the medical records office only if they have time (the frequency was not given) and only once did a clinician answer the phone for the front desk. Alternatively, it appears that there is no cross training for the clerical staff in clinician positions or visa versa. Furthermore, there has been only one permanent transfer in the last five years of a clerical, a receptionist, into a group B position, a case aide position. The record does not reflect any transfers from petitioned-for positions to a clerical position.

The lack of transfers reflects the difference in the type of work the two groups perform. Clinicians deal directly with clients, while the front desk clericals' dealings with clients are primarily limited to a walk-in greeter function and the other clericals' contact with patients is minimal. The Board, in applying the healthcare rule, noted as significant in finding separate units the lack of direct patient care functions of one group of employees opposed to other groups of employees who perform a direct patient care function. See *Hebrew Home & Hospital*, 311, NLRB 1400, 1403 (1993). Here, the clericals perform traditional office clerical work of admitting, insurance, credit, cashiering, secretarial, keypunch or computer systems work, bookkeeping and accounting. See *CGE Caresystems, Inc.*, 328 NLRB 748 (1999); *Valley Hospital, LTD*, 220 NLRB 1339, 1343 (1975); *Jackson Manor Nursing Home*, 194 NLRB 892, 896-897 (1972); See, also, *Trans World Airlines, Inc.*, 211 NLRB 733 (1974) (receptionist found to be an office clerical where she met and routed people and typed reports while working with excluded office clericals and temporary replacements who were office clericals).

Although the Employer makes much of the fact that all its employees are trained in crisis evaluation—the Employer refers to it as screening—the amount of time devoted to this training and the frequency to which it is put to use is unspecified in the record. In any event, the State does not appear to recognize the clericals' performance of this function as rising to the level of having direct counseling with clients such that the clericals must, as the petitioned-for employees are required to do, register as counselors with the State.²¹

²¹ The Employer cites *Lifeline Mobile Medics, Inc.*, 308 NLRB 1068 (1992) where the Board included clerical employees who performed a screening function with technical employees. That case, however, is distinguishable in that the dispatchers in question were found to perform hybrid functions of office clerical and dispatching work. Further, the Board found the dispatching portion of their work involved trying to learn the condition of patients in order to convey relevant information to the EMT technical employees, and, e.g., relaying cardiopulmonary resuscitation instructions to callers on the phone. By contrast, nothing in the record here suggests that the clericals' "screening" function rises to the level of direct care interaction exhibited by the dispatchers in *Lifeline Mobile Medics*. Additionally, the dispatchers in *Lifeline Mobile Medics* were directly supervised by the employer's director who constituted the entire "hierarchy" of supervision for the clericals and EMTs. Here, Bud Hatfield, who neither supervises any clinicians nor is a clinician himself, supervises all the disputed clericals, and all the clinicians have program managers as their direct supervisors. Unlike the director in *Lifeline Mobile Medics*, the Executive Director here directly supervises neither clericals nor the petitioned-for employees. The Board in *Lifeline Mobile Medics* also

Additionally, the “protected payee” function shared by case managers and accounting clericals, and highlighted by the Employer, is also minimal; between 0 and 5 percent of the accounting clericals’ time is dedicated to this function. Thus, the record reveals the interchange between case managers and the clericals is minimal.

Contact between the petitioned-for employees and the clericals is also minimal. The clinicians have their own separate meeting to which clericals rarely attend. Although a single clerical attends another clinical meeting held at the beginning of the day three days a week, the purpose for the clerical’s presence is to disseminate to the other clericals the “crisis” condition of clients presented at the meeting.

Also, although as contended by the Employer, the medical records clericals will pull a client’s file and leave it for case managers, the record reveals no clinical use of the files by the clericals, and any contact between the medical records clericals and clinicians occurs if both happen to be in the anteroom where the client charts are laid out. Moreover, the medical records clericals have no contact with clients and the medical records area is not accessible to clients. The Board has found such limited contact with clients and service employees does not require medical records clericals’ inclusion in a service and maintenance unit. *St. Luke’s Episcopal Hospital*, 222 NLRB 674, 677 (1976); *Southwest Community Hospital*, 219 NLRB 351 (1975); cf. *Valley Hospital*, supra, and *Family Doctor Medical Group*, 222 NLRB 118, 120 (1976) (medical records personnel included where they spend a substantial amount of their time in patient care area performing functions directly related to the care and treatment of patients).²²

Thus, although the clericals share the same policy manual, benefits (except cell phone benefits), and disciplinary procedure as all employees, and have pay comparable to that of employees in voting group B, I find, on balance, the clerical positions at issue do not share a sufficient community of interest with the petitioned-for employees because their duties are business office clerical in nature, they have separate supervision from the petitioned-for employees, do not have flexible or evening schedules as are required of petitioned-for employees, are located in separate offices or at the front desk and have little contact or interchange with petitioned-for employees. Accordingly, I shall exclude them from voting group B as business office clerical employees.²³

found significant that the dispatchers’ job involved a high degree of contact, close proximity of workstations, and intertwined job mobility with the technical unit employees. These factors are also not present here.

²² Employer’s cite to *Levine Hospital of Hayward*, 219 NLRB 327 (1975) and *Duke University*, 226 NLRB 470 (1976) are inapposite. In *Levine Hospital*, the Board found the medical records clerks shared a community of interest with an existing service and maintenance unit since they performed work virtually identical to work performed by other hospital clerical employees who were included in the unit. Further, the medical records clerks made up and distributed surgical schedules throughout the hospital, a function not performed by the medical records clericals here. The medical records clerks in *Duke University* were involved with researching patient history numbers as well as issuing new numbers through a computer system for new patients. They were also not under the same supervision as business office employees. Neither situation is the case here.

²³ The Employer argues, it seems inconsistently, that the bookkeeping, accounting, MIS, and administrative aide clericals might be business office clericals and thus only 6 disputed clerical employees remain, which would allegedly be too small a unit to be separately certified. The Employer cites the 5-employee exception in Rulemaking for small units as its authority. However, I need not reach the Employer’s hypothetical conjecture since I have found all the disputed clerical employees to be business office clericals and thus they are more than sufficient in number to constitute an appropriate unit of such employees even under Rulemaking.

On the basis of the foregoing and the record as a whole, I direct that a Sonotone election be held in the following voting groups:

Group A (professional employees). Included: all full and regular part time registered nurses, county designated mental health professionals, clinicians 2 and 3, including adult case managers and therapists, geriatric mental health specialists, child and adolescent case managers and therapists, co-occurring disorders counselors, MICA program counselors, hospital liaisons, homeless outreach case managers, employment specialists, and jail mental health case managers located at the Employer's facilities located at 135 West Main Street, Chehalis, Washington; and 2428 Reynolds Avenue, Centralia, Washington.

Excluded: all full and regular part time clinical 1s, case aides, office clerical employees, guards, and supervisors as defined in the Act, and all other employees employed by the Employer at its facilities located at 135 West Main Street, 187 West Main Street, Alfred Street, 40 Southwest Cascade Avenue, Chehalis, Washington; and 2428 Reynolds Avenue, Centralia, Washington.

Voting group B (non-professional employees). Included: all full and regular part time clinical 1s and case aides employed by the Employer at its facilities located at 135 West Main Street, 187 West Main Street, Alfred Street, 40 Southwest Cascade Avenue, Chehalis, Washington; and 2428 Reynolds Avenue, Centralia, Washington.

Excluded: all full and regular part time registered nurses, county designated mental health professionals, clinicians 2 and 3, including adult case managers and therapists, geriatric mental health specialists, child and adolescent case managers and therapists, co-occurring disorders counselors, MICA program counselors, hospital liaisons, homeless outreach case managers, employment specialists, and jail mental health case managers, office clerical employees, guards, and supervisors as defined in the Act, and all other employees employed by the Employer at its facilities located at 135 West Main Street, 187 West Main Street, Alfred Street, 40 Southwest Cascade Avenue, Chehalis, Washington, and 2428 Reynolds Avenue, Centralia, Washington.

There are approximately 34 professional employees in voting group A and 10 or 11 nonprofessional employees in voting group B.

C.) DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting groups found appropriate above. The voters in Group A (the professionals) shall be presented with two questions. First, "Do you wish to be included in the same unit as nonprofessional employees of Cascade Mental Health Care?" Second, "Do you desire to be represented for the purposes of collective bargaining by SERVICE EMPLOYEES INTERNATIONAL UNION, DISTRICT 1199NW, AFL-CIO, CLC?"

If a majority of voters in Voting Group A vote "Yes" to Question 1, indicating a choice to be included in a unit with nonprofessionals, the Groups shall be so included. The votes on Question 2 will then be counted with the votes of Voting Group B (the

nonprofessionals) to decide the representative for the entire unit. If, on the other hand, a majority of the professional employees in voting group A do not vote for inclusion, these employees will not be included with the nonprofessional employees, and their votes on the second question will be separately counted to decide whether they want to be represented in a separate professional unit.

1. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off and on-call employees averaging 4 or more hours per week, in the calendar quarter preceding said payroll period. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike, who have retained their status as strikers but who have been permanently replaced as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

2. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Director for Region 19, an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before **July 23, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (206) 220-6305. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

3. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

4. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EST on **July 30, 2003**. The request may **not** be filed by facsimile.

DATED at Seattle, Washington this 16th day of July 2003.

Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
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915 Second Avenue
Seattle, WA 98174

470-6760